



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 585

IN THE MATTER
OF
HUGH K. HUBBARD

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Hugh K. Hubbard ("Hubbard") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 22, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Hubbard. The Commission has concluded its inquiry and, on April 21, 1999, by a majority vote, found reasonable cause to believe that Hubbard violated G.L. c. 268A.

The Commission and Hubbard now agree to the following findings of fact and conclusions of law:

1. Hubbard was, during the time relevant, a member of the Belchertown Water District Commission ("BWDC"). As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1(g). Hubbard has served on the BWDC since 1988.

2. The BWDC is an elected, three member board which oversees the operation of the Belchertown Water District ("District"). The BWDC meets monthly to review and approve bills and to authorize significant expenditures.

3. The commissioners sign the pay warrants. A minimum of two commissioners must sign a warrant before it can be paid.

4. In September 1994, the BWD commissioners appointed Hubbard's wife, Carol Hubbard ("Carol"), clerk treasurer. Carol receives an annual salary of approximately \$10,000.^{1/}

5. Carol is supervised by the BWD commissioners including her husband, Hubbard.^{2/}

6. Carol is paid monthly. The BWD commissioners, including Hubbard, approve the weekly warrant with her monthly salary on it.

7. The number of hours Carol works per week varies with the time of year and the amount of work. During the annual meeting and any period of heavy BWD construction activity, it may take her up to 25 hours per week to prepare the invoices, warrants, and payments. During slower times, she may only need three hours per week to get all of her work done. No one other than the BWD commissioners certifies the number of hours Carol works each month.

By approving the weekly warrant with her monthly salary on it, the BWD commissioners, in effect, certify that she has satisfactorily performed her duties.^{3/}

7. During the period of 1994 through 1998, Hubbard as a BWD Commissioner approved weekly warrants authorizing his wife to receive a total of \$45,000 in salary payments.

8. Except as otherwise permitted in that section,^{4/} G.L. c 268A, §19 in relevant part prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he or an immediate family member has a financial interest.

9. The decisions by the BWDC to approve the pay warrants were particular matters.^{5/}

10. Because Hubbard was substantially and personally involved in making the foregoing decisions, he participated^{6/} in those particular matters.^{7/}

11. Each such decision involved a Hubbard immediate family member, Hubbard's wife. Hubbard's wife had a financial interest in those particular matters. Hubbard was, of course, aware of her financial interest in these decisions at the time he so participated.

12. Therefore, by participating in the payment decisions as described above, Hubbard repeatedly participated in particular matters as a BWDC member in which to his knowledge his wife had a financial interest, thereby violating §19.

13. Hubbard did not realize that signing the pay warrants certifying the hours worked and authorizing payment of his wife's salary violated c. 268A.^{8/}

In view of the foregoing violation of G.L. c. 268A by Hubbard, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings.^{9/} In disposing of this matter by this disposition agreement, Hubbard waives all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 3, 1999

^{1/}Town meeting votes on Carol's salary; it has ranged between \$9,000 to \$10,200.

^{2/}The BWD auditor also conducts an annual audit to determine if Carol is performing all of her responsibilities.

^{3/}See General Laws, c. 41, §56 which provides: "The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be..."

4/None of the exceptions applies here.

5/"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

6/"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

7/General Laws, c. 41, §56 makes the board approval significant.

8/Ignorance of the law is no defense to a violation of G.L. c. 268A. *In re Doyle*, 1980 SEC 11, 13. *See also, Scola v. Scola*, 318 Mass. 1, 7 (1945)

9/The Commission chose not to impose a fine because it believes there is a wide-spread impression that it is permissible for a public employee to approve routine payroll warrants for family members. This impression is incorrect, although the existence of the misapprehension is somewhat mitigating. Payroll warrants, even those that are routine in nature (i.e., a standard set amount) are still particular matters in which the payee (the immediate family member) has a financial interest. Moreover, the Commission wants to emphasize that it does not consider a public employee's authorizing such warrants under these circumstances to be unimportant, however, routine it may be. *See EC-COI-98-5*, and in particular, G.L. c. 41, §56 cited therein which requires board members to certify that services have been performed and should be paid for. This certification was particularly important in Hubbard's situation where there was no department head's approval other than the board's (although as indicated in *EC-COI-98-5*, a board's certification pursuant to c. 41, §56 is significant even if it comes after a department head's approval.).